

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AUGUSTUS MARSHALL,)	
)	
Plaintiff,)	
)	
v.)	No. 1:21-cv-02862-JPH-DML
)	
GEO GROUP INC., et al.,)	
)	
Defendants.)	

**ORDER DENYING WITHOUT PREJUDICE MOTIONS
FOR ASSISTANCE WITH RECRUITING COUNSEL**

Plaintiff, Augustus Marshall, has filed two identical motions for assistance recruiting counsel. Dkt. 23; dkt. 24. Litigants in federal civil cases do not have a constitutional or statutory right to court-appointed counsel. *Walker v. Price*, 900 F.3d 933, 938 (7th Cir. 2018). Instead, 28 U.S.C. § 1915(e)(1) gives courts the authority to "request" counsel. *Mallard v. United States District Court*, 490 U.S. 296, 300 (1989). As a practical matter, there are not enough lawyers willing and qualified to accept a pro bono assignment in every pro se case. *See Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014) ("Whether to recruit an attorney is a difficult decision: Almost everyone would benefit from having a lawyer, but there are too many indigent litigants and too few lawyers willing and able to volunteer for these cases.").

"When confronted with a request under § 1915(e)(1) for pro bono counsel, the district court is to make the following inquiries: (1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Eagan v. Dempsey*, 987 F.3d 667, 682 (7th Cir. 2021) (quoting *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007)). These two questions "must guide" the Court's determination whether to attempt

to recruit counsel. *Id.* These questions require an individualized assessment of the plaintiff, the claims, and the stage of litigation. *See Pruitt*, 503 F.3d at 655-56. The Seventh Circuit has specifically declined to find a presumptive right to counsel in some categories of cases. *McCaa v Hamilton*, 893 F.3d 1027, 1037 (7th Cir. 2018) (Hamilton, J., concurring); *Walker*, 900 F.3d at 939.

The first question, whether litigants have made a reasonable attempt to secure private counsel on their own "is a mandatory, threshold inquiry that must be determined before moving to the second inquiry." *Eagan*, 987 F.3d at 682; *see also Thomas v. Anderson*, 912 F.3d 971, 978 (7th Cir. 2019) (because plaintiff did not show that he tried to obtain counsel on his own or that he was precluded from doing so, the judge's denial of these requests was not an abuse of discretion). Plaintiff has attempted to contact multiple attorneys with requests for representation without success. The Court finds that he has made a reasonable effort to recruit counsel on his own before seeking the Court's assistance.

"The second inquiry requires consideration of both the factual and legal complexity of the plaintiff's claims and the competence of the plaintiff to litigate those claims himself." *Eagan*, 987 F.3d at 682 (citing *Pruitt*, 503 F.3d at 655). "Specifically, courts should consider 'whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself.'" *Id.* (quoting *Pruitt*, 503 F.3d at 655). "This assessment of the plaintiff's apparent competence extends beyond the trial stage of proceedings; it must include 'the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial.'" *Id.* (quoting *Pruitt*, 503 F.3d at 655).

Plaintiff's motions indicate that he did not finish 12th grade, but his filings reveal no difficulty reading or writing in English. He asserts that he does not fully understand the law or how to represent himself, but this is true of many inmates pursuing claims in this Court. Plaintiff knows of no other limitations or factors that interfere with his ability to litigate this case.

Plaintiff's claims in this action relate to his placement in restrictive housing for refusing to participate in a prison program. The Court dismissed his complaint for failure to state a claim and provided him an opportunity to file an amended complaint. Although his complaint was dismissed for failing to state a claim, Plaintiff's filings in this action have been coherent and appropriate. He is competent to litigate at this stage of the proceedings. There is no indication that the appointment of counsel would enable him to state viable claims in an amended complaint.

For these reasons, Plaintiff's motions for assistance recruiting counsel, dkt. [24] and dkt. [25], are **denied without prejudice**.

SO ORDERED.

Date: 7/8/2022



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

AUGUSTUS MARSHALL
211928
NEW CASTLE - CF
NEW CASTLE CORRECTIONAL FACILITY - Inmate Mail/Parcels
1000 Van Nuys Road
NEW CASTLE, IN 47362